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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 AMERICAN PRESIDENT LINES, LTD.,

11 Plaintiff,

CASE NO. C9-5109BHS

12 v.

13 KEVIN PEDERSON and DONNA
14 PEDERSON, jointly and severally and
their marital community, d/b/a Pacific
15 Harbor Trading,

ORDER GRANTING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

16 Defendants.

17 This matter comes before the Court on Plaintiff's Motion for Summary Judgment
18 (Dkt. 6). The Court has considered the pleadings filed in support of the motion,
19 Defendants' failure to respond, and the remainder of the file, and hereby grants the
20 motion for the reasons stated herein.

21 **I. FACTUAL AND PROCEDURAL BACKGROUND**

22 On February 27, 2009, Plaintiff American President Lines, Ltd., filed a complaint
23 against Defendants Kevin Pederson and Donna Pederson, d/b/a as Pacific Harbor
24 Trading. Dkt. 1. On March 26, 2009, Defendants Kevin and Donna Pederson answered
25 the complaint with a letter that stated: "We deny the allegations." Dkt. 5.

26 On May 14, 2009, Plaintiff filed a Motion for Summary Judgment. Dkt. 6.
27 Defendants did not respond. On June 22, 2009, the Court renoted the motion to July 10,
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2009 and informed Defendants, who are proceeding pro se, of the requirements of responding to, and the risks of failure to respond to, Plaintiff's motion. Dkt. 9. Again, Defendants failed to respond.

Plaintiff claims that from November 2006 through May 2007 it transported various items for Pacific Harbor Trading to and from numerous international ports. Dkt. 8, Affidavit of N.D. McCluskey ("McCluskey Aff."), ¶¶ 3-23. Plaintiff also claims that Pacific Harbor Trading has failed to pay for these shipments and currently owes Plaintiff \$68,510.00. *Id.* ¶ 24.

With regard to the business entity known as "Pacific Harbor Trading," Plaintiff claims that it "is the assumed name of the business managed, owned, and operated by Kevin Pederson and Donna Pederson, who are husband and wife." *Id.* ¶ 25; Dkt. 7, Affidavit of Olaf Aprans ("Aprans Aff."), ¶¶ 2-9, Exhibit 22-26. Plaintiff also claims that all of the shipments for which it claims it is owed money were contracted by either Kevin or Donna Pederson for the benefit of the business named "Pacific Harbor Trading." McCluskey Aff. ¶ 25.

Plaintiff claims that "Pacific Harbor Trading" is not listed as a business entity with the Washington Secretary of State. Aprans Aff. ¶¶ 5 & 23. However, a website for the entity lists Kevin Pederson as "President" and Donna Pederson as "Accounting." *Id.* ¶ 24.

II. DISCUSSION

As a threshold matter, "[i]f a party fails to file papers in opposition to a motion, such failure may be considered by the court as an admission that the motion has merit." Local Civil Rule 7(b)(2). Defendants failed to file a response and therefore the Court may consider this failure as an admission that Plaintiff's motion has merit.

A. Summary Judgment Standard

Summary judgment is proper only if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material

1 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).
2 The moving party is entitled to judgment as a matter of law when the nonmoving party
3 fails to make a sufficient showing on an essential element of a claim in the case on which
4 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323
5 (1985). There is no genuine issue of fact for trial where the record, taken as a whole,
6 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*
7 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must
8 present specific, significant probative evidence, not simply “some metaphysical doubt”).
9 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists if
10 there is sufficient evidence supporting the claimed factual dispute, requiring a judge or
11 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477
12 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d
13 626, 630 (9th Cir. 1987).

14 The determination of the existence of a material fact is often a close question. The
15 Court must consider the substantive evidentiary burden that the nonmoving party must
16 meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477
17 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual
18 issues of controversy in favor of the nonmoving party only when the facts specifically
19 attested by that party contradict facts specifically attested by the moving party. The
20 nonmoving party may not merely state that it will discredit the moving party’s evidence at
21 trial, in the hopes that evidence can be developed at trial to support the claim. *T.W. Elec.*
22 *Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson, supra*). Conclusory, nonspecific
23 statements in affidavits are not sufficient, and missing facts will not be presumed. *Lujan*
24 *v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888-89 (1990).

1 **B. Plaintiff's Motion**

2 Plaintiff requests that the Court enter an order that Plaintiff "is entitled to a
3 judgment as a matter of law against both defendants jointly and severally in the amount of
4 \$68,510.00." Dkt. 6 at 6.

5 **1. Shipping Contracts**

6 "Anyone who contracts to pay for ocean freight can be held liable in accordance
7 with ordinary contract law as applied in maritime matters." *EIMSKP v. Atlantic Fish*
8 *Market, Inc.*, 417 F.3d 72, 76 (1st Cir. 2005) (citing *Norfolk S. Ry. Co. v. Kirby*, 543 U.S.
9 14 (2004)). "To determine the existence of [potential] contractual liability, the courts
10 examine first the bill of lading which 'serves both as a receipt and as a contract.'" *States*
11 *Marine Int'l, Inc. v. Seattle-First Nat'l Bank*, 524 F.2d 245, 248 (9th Cir. 1975) (quoting
12 *Louisville & N.R. Co. v. Central Iron & Coal Co.*, 265 U.S. 59, 67 (1924)). "[C]ontracts
13 for the carriage of goods by sea must be construed like any other contracts: by their terms
14 and consistent with the intent of the parties." *Kirby*, 543 U.S. at 31.

15 In this case, Plaintiff has submitted multiple bills of lading for shipping services
16 provided by Plaintiff at the request of Pacific Harbor Trading. The Court finds that these
17 bills are contracts that create contractual liability for both parties. Plaintiff claims that it
18 has fully performed its duties under the contract and that Pacific Harbor Trading has
19 failed to perform its duties of paying for the services rendered. Neither Defendants nor
20 Pacific Harbor Trading have submitted facts that contradict this allegation. Therefore, the
21 Court grants Plaintiff's motion and finds that Pacific Harbor Trading is in breach of
22 contract for an amount of \$68,510.00.

23 **2. Individual Liability**

24 "[T]he association of two or more persons to carry on as co-owners a business for
25 profit forms a partnership, whether or not the persons intend to form a partnership."
26 RCW 25.05.055 (2009). The burden of proving a partnership is on the party asserting its
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1 existence. *Kintz v. Read*, 28 Wn. App. 731, 734 (1981). Direct evidence of an agreement
2 to form a partnership is unnecessary to show the existence of a partnership; circumstantial
3 evidence is sufficient. *Malnar v. Carlson*, 128 Wn.2d 521, 535 (1996). Whether a
4 partnership exists depends on the intention of the parties, which is ascertained by
5 examining all facts and circumstances, including parties' action and conduct. *Douglas v.*
6 *Jepson*, 88 Wn. App. 342, 347 (1997). When it appears from the evidence that the parties
7 have entered into a business relation, combining their property, labor, skill, and
8 experience for the purpose of joint profit, a partnership will be deemed established.
9 *Malnar*, 128 Wn.2d at 535.

10 “[A]ll partners are liable jointly and severally for all obligations of the partnership
11” RCW 25.05.125. Any obligation incurred on behalf of the partnership and in
12 furtherance thereof fastens liability for that obligation on all the partners. *Dygert*
13 *v. Hansen*, 31 Wn.2d 858, 860-61 (1948).

14 In this case, Plaintiff argues that “there is no genuine factual issue that Kevin
15 Pederson and Donna Pederson acted together, combining their labor, skills, and capital to
16 conduct their business called Pacific Harbor Trading.” Dkt. 6 at 5. The Court agrees and
17 finds that Defendants were operating a partnership known as “Pacific Harbor Trading.”
18 As such, they are jointly and severally liable for the debt of that partnership.

19 Therefore, the Court grants Plaintiff’s motion on the issue of whether Defendants
20 were operating a partnership.

21 **3. Community Property**

22 There is a presumption that all debts of each spouse acquired during marriage
23 attaches to the community estate and the burden is on the denying spouse to show that the
24 incurred debt is not a community debt. *Warren v. Washington Trust Bank*, 19 Wn. App.
25 348, 360 (1978). A spouse contesting a community debt has the burden of showing that it
26 was not “incurred with the intention or expectation, at the inception of the transaction, on
27 the part of the spouse that a material economic benefit would accrue to the community.”
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1 *Id.*


2 In this case, Plaintiff argues that “there is no genuine issue with respect to the fact
3 that the debt defendants owe to [Plaintiff] attaches to their community property.” Dkt. 6
4 at 6. The Court agrees, as neither Defendant has responded to overcome the presumption
5 of community debt. Therefore, the Court grants Plaintiff’s motion on this issue.

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7 **III. ORDER**

8 Therefore, it is hereby

9 **ORDERED** that Plaintiff’s Motion for Summary Judgment (Dkt. 6) is
10 **GRANTED.** The clerk shall enter final judgment in favor of Plaintiff for the amount of
11 \$68,510.00.

12 DATED this 16th day of July, 2009.

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15 BENJAMIN H. SETTLE
16 United States District Judge
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